

REMARKS

Applicant notes that the above-identified application was granted special status on January 22, 1991, and is subject to expedited review. Applicant also notes that an initial response to the September 30, 1991 Advisory Action was filed with the Patent Office on November 18, 1991 via facsimile transmission.

Applicant would like to thank Examiner Robinson for the courtesy extended to Dr. Barclay, Mr. Meager and Mr. Tompkins at the personal interview conducted on November 25, 1991 at Examiner Robinson's office. During that interview, the above amendments were discussed. Specifically, Applicant explained the novel features of the invention, including: (a) the use of whole cell microorganisms in a food product, which, prior to Applicant's invention, had not been suggested or disclosed; (b) the advantages and unexpected results obtained from using low salinity culture conditions (which is especially relevant in view of the fact that several potential licensees have expressed interest in licensing the subject technology mainly due to the fact that certain microorganisms can be cultured in low salinity conditions, a fact indicative of commercial success which is an important secondary consideration indicating unobviousness); (c) the advantages and unexpected results of using higher culture temperatures than taught in the prior art, and indeed which were taught away from in the prior art; (d) the fact that the experts in the field were teaching away from using microorganisms of the order Thraustochytriales; and (e) the high production rates or other advantages obtained with the specific strains Applicant is presently claiming.

Applicant believes that the amendments to the above-identified claims are consistent with the discussions held with Examiner Robinson on November 25, 1991. Specifically, Examiner Robinson objected to Claim 1 and the claims dependent thereon

because Examiner Robinson felt that the claim language did not make it clear that the microorganism was present in the food product. Claim 1 has been amended to make it clear that the microorganism is indeed present in the food product. Additionally, Examiner Robinson believed that the fact that the microorganisms could be selected from the order Thraustochytriales rendered the claim overly broad. Applicant pointed out that the presence of the microorganism in a food product was believed to be novel and is an important advance in the art which should be patentable, even if the entire order is claimed. However, in order to advance prosecution of this case, Applicant has limited the microorganism to the specific genera and also added functional language to further describe the microorganisms, as suggested by Examiner Robinson. It is believed that these amendments overcome all of the Examiner's objections and place independent Claim 1, and the claims dependent thereon (Claims 2, 3, 4, 6, 7, 53, 54, 55, 66, 68 and 69), in condition for allowance.

Examiner Robinson objected to Claim 58 and the claims dependent thereon as encompassing the prior art. The Examiner suggested that these claims be amended to place them in product by process format. Applicant has complied with Examiner Robinson's request. Because these claims include the step of culturing the microorganisms of certain genera in a low salinity medium, it is believed that these claims are patentable over the prior art. It is respectfully submitted that the amendments remove all of Examiner Robinson's objections and place independent Claim 58 and the claims dependent thereon (Claims 59, 67, 70 and 71) in condition for allowance.

Additionally, new independent Claim 72 has been added to specifically claim five preferred microorganism species in a food product. As pointed out in the present application, these

species provide important advantages over prior art microorganisms. In view of the important advantages of these species, combined with their high omega-3 highly unsaturated fatty acid production levels, it is respectfully submitted that new Claim 72 is allowable.

As the specific claim amendments described above were discussed at the personal interview, it is not believed that any new issues have been raised by the amendments or by the addition of the new claims. Therefore, it is respectfully submitted that independent Claims 1, 58 and 72 and dependent Claims 2, 3, 4, 6, 7, 53, 54, 55, 59, 66, 67, 68, 69, 70 and 71 are in condition for allowance and Applicant respectfully requests the Examiner to pass this case to issue.

As discussed at our meeting on November 25, 1991, if the Examiner has any problems with the claim language of the newly amended or added claims, he will contact Applicant's attorney, Michael Tompkins, at (303) 863-2969 to discuss the matter in further detail. In addition, if Examiner Robinson still has concerns regarding the amendments, Applicant would like to request a personal interview with Examiner Robinson, due to the belief that much more can be accomplished with a face-to-face interview than via telephone or written correspondence.

Applicant expressly authorizes the Examiner to cancel Claims 9 through 52, which were previously withdrawn pursuant to a restriction requirement.

Applicant had previously filed a petition for a one-month extension of time, extending the period of response to November 30, 1991. An additional extension of time for the next one-month period accompanies this response. It is not believed that any fees are due for the additional claims, as a greater number were previously withdrawn. In the event that any

additional fees are due, Applicant authorizes the Patent Office to charge Deposit Account No. 19-1970.

Respectfully submitted,

SHERIDAN ROSS & MCINTOSH

By: 

Michael L. Tompkins  
Registration No. 30,980  
1700 Lincoln Street, Suite 3500  
Denver, Colorado 80203  
(303) 863-9700

Date: 12/4/91

2391\ -1.AMD\MLT\KS